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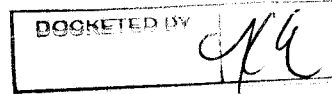
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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE FORMAL
COMPLAINT OF NICK MYERS
AGAINST JOHNSON UTILITIES,
L.L.C.

DOCKET WS-02987A-16-0181

**JOHNSON UTILITIES' REPLY RE
MOTION TO DISMISS**

Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") hereby files its
Reply to Mr. Nick Myers' Response to its Motion to Dismiss the Formal Complaint.

MYERS' ADMISSIONS

The Response admits that Mr. Myers can only represent himself in this matter,
Response, p. 1, line 19, page 7, line 8 (he also admitted that fact at the Procedural

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Conference).

Based on that admission, all that remains of the Formal Complaint is that Mr. Myers is alleging that the closure of the standpipe has resulted in some personal inconvenience (which, at the Procedural Conference Mr. Myers admitted was mitigated by having his own well on one of his two properties). At page 7, lines 3 – 5 of the Response, Mr. Myers stated:

This complaint is strictly based on the fact that I have had to make adaptations to the way I get my water, it is a major inconvenience, and causes a lot of time and energy usage.

Mr. Myers admits that he offered to drop his war against Johnson Utilities if the Company waived all fees and costs required of other customers. The pages of “transcript” show only that the Company did what the Commission wants all CC&N holders to do when faced with customer complaints – find out what the dispute is about and what the customer wants and resolve it if possible. That is what Mr. Chris Johnson did – he contacted the complainant. Importantly, Mr. Chris Johnson never said that the Company agreed with what Johnson Utilities considers to be an illegal and improper proposal. Rather, he said write it down and it would be shared with the Company’s decision makers.¹

Also at the Procedural Conference, Mr. Myers admitted that Roadrunner was not relevant to this Formal Complaint.

Mr. Myers appears to admit that the standpipe was not in the current tariff.

¹ Rule 408, Rules of Evidence is cited by Mr. Myers in an effort to strike his improper proposal. It does not apply for a number of reasons. An improper proposal cannot be made secret by declaring it part of settlement discussions. It is in the record as the Commission was told of it at the August 2015 Staff Meeting. The fact finding discussion was not part of this matter but occurred in the earlier docket. Finally, a complainant cannot be allowed to file a complaint with the Commission, make an improper/illegal demand to settle and expect that to remain secret.

1 Mr. Myers admits, by not offering any authority to the contrary in his Response or
2 at the Procedural Conference, that the Commission lacks jurisdiction to order Johnson
3 Utilities to extend a pipeline to each of his two properties without the payment of any
4 deposit or signing a line extension agreement.

5 Mr. Myers does not contest the facts that the standpipe was established for use in
6 construction, not for domestic potable water. Nor does he contest the fact that using the
7 standpipe for domestic potable water results in the very real risk of liability to the
8 Company.
9

10 Mr. Myers admits that Johnson Utilities allows water haulers who establish an
11 account, provide insurance and abide by other commercially reasonable terms to obtain
12 water from a metered standpipe at a Johnson Utility plant within the CC&N. He admits
13 that he has not applied.
14

15 Mr. Myers does not contest the fact that his 2015 representation that 100% of
16 potential customers would sign up did not happen in the areas served by the lines installed
17 by Johnson Utilities.
18

19 Thus, the only portion of the Motion to Dismiss not admitted by Mr. Myers is
20 Section II.C, pages 6 – 7, entitled “Johnson Utilities was not required to seek regulatory
21 approval to cease operations of the standpipe.”
22

23 **R 14-2-402(C) DOES NOT APPLY**

24 Mr. Myers cites Commission Rule R 14-2-402(C) for the proposition that the
25 standpipe is a service that the Company cannot discontinue without Commission approval.
26 Response, p. 8, lines 2 – 6. That section does not apply as “service” is defined in R 14-2-
27 401(34), the definition of “tariffs,” as “documents filed with the Commission which list the
28

1 services” . . . “offered by the water company.” The standpipe is not in the tariff, was not a
2 “service,” therefore, no permission from the Commission was required to close it.

3 Since the standpipe is not in Johnson Utilities’ current tariff, Mr. Myers found the
4 word “standpipe” in the section of the tariff involving how to deal with severe water
5 shortages and argues that the mention made the standpipe a service triggering R 14-2-
6 402(C). See p. 8, lines 6 – 12. First, that mention does not mean that the standpipe is a
7 service in the tariff; there is no price or conditions of service set out. Second, the fact that
8 the standpipe can be suspended in a water emergency demonstrates that it is not a “service”
9 in the tariff.
10

11 **OTHER MYERS’ ADMISSIONS**

12 Mr. Myers admitted at the Procedural Conference that in 2015 he represented that
13 there were severe water problems in the wildcat area in which he has chosen to live and
14 own property. He also admitted that he represented that 100% of the potential customers
15 would sign up for water service if water lines were constructed. Mr. Myers does not contest
16 Johnson Utilities extraordinary community outreach efforts or that Johnson Utilities has
17 constructed about 19,000 feet of lines at great cost. Nor does Mr. Myers contest that only
18 about 38 customers have signed up for service. Mr. Myers does not contest that there are
19 substantial changed circumstances from his 100% sign up representation and the reality
20 Johnson Utilities has had to deal with of almost no new customers.
21

22 Rather, Mr. Myers argues that the CC&N holder is required to extend lines at its
23 own expense. That is not the law or practice. First, in this case, Johnson Utilities embarked
24 on an extensive effort to extend service – based on the 100% sign up representation. When
25 that representation turned out to be false, Mr. Myers argues that Johnson Utilities is
26
27
28

1 somehow bound to continue expending huge amounts of money that will not result in
2 needed infrastructure. In other words, Mr. Myers argues that the changed circumstances
3 (the fact that Mr. Myers representation turned out not to be valid) cannot be taken into
4 account by Johnson Utilities. The reasonable conclusion is that the nice people who chose
5 to live in wildcat subdivisions are doing just fine without the services provided in platted
6 subdivisions.
7

8 Second, Mr. Myers' "legal" point appears to be that a CC&N holder must extend
9 utility service to anyone who wants it at the utilities expense. Line extension agreements
10 and the myriad provisions of utility tariffs in Arizona demonstrate that Mr. Myers view of
11 the law is wrong. Mr. Myers' "legal" view is really about his failed business, which
12 charged outrageous rates to his neighbors.
13

14 CONCLUSION

15 Mr. Myers chooses to live in a wildcat area without typical residential infrastructure
16 present in platted subdivisions. When Johnson Utilities made a sensible management
17 decision to close the oft-vandalized standpipe and replace it with the ability of water haulers
18 to obtain water at a Johnson Utility plant (after establishing an account, demonstrating
19 insurance and other commercially reasonable terms) Mr. Myers did not apply.
20
21

22 Mr. Myers' hands are unclean in this matter. The record shows that Mr. Myers
23 attempted to induce Johnson Utilities into buying his silence on the last occasion the
24 standpipe issue came before the Commissioners in 2015.
25

26 The Commission lacks jurisdiction to require Johnson Utilities to install main lines
27 without residents signing main extension agreements. Likewise, the Commission lacks
28 jurisdiction to require Johnson Utilities to reinstall and begin operating, for purposes of

1 providing potable water, a standpipe closed and dismantled nearly a year ago; Johnson
2 Utilities' tariff does not include potable water standpipe service.

3 The Commission does not have jurisdiction to order that Mr. Myers not be
4 inconvenienced.

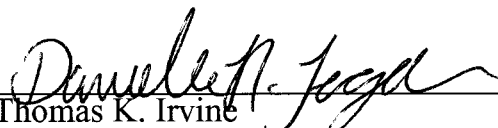
5 Thus, Mr. Myers' Formal Complaint should be dismissed for lack of subject matter
6 jurisdiction pursuant to Rule 12(b)(1) of Arizona Rules of Civil Procedure.

7 Johnson Utilities respectfully requests that the Complaint be dismissed, with
8 prejudice.
9

10 FILED this 19th day of July, 2016.

11
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ORIGINAL and thirteen (13) copies
filed this 19th day of July, 2016, with:

Docket Control
ARIZONA CORPORATION COMMISSION
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Phoenix, Arizona 85007

COPIES of the foregoing hand-delivered
this 19th day of July, 2016, to:

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COPY of the foregoing sent via
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